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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 683

ALFRED SCOTT ALDRIDGE, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF PETITIONER.

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No. 683

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vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF PETITIONER.

Opinion of the Court Below.

The opinion of the Court of Appeals of the District of Columbia in the above-entitled cause may be found at page 45 of the record. It is not at this time officially reported.

1*y*

Jurisdiction of This Court.

The judgment of the Court of Appeals of the District of Columbia affirming judgment of the Supreme Court of the District of Columbia was rendered January 6, 1931 (R. 45). On February 25, 1931, this Court granted a writ of certiorari under and by virtue of Section 240-A of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

The sole question presented herein attacks the validity of the ruling of the trial Court prohibiting a *voir dire* examination of prospective jurors relative to racial prejudice.

Statement of the Case.

The defendant, in appearance and in fact a negro, twenty-two years old, was indicted for murder in the first degree. The indictment charged that defendant killed Harry J. McDonald, a white police officer. A plea of not guilty was entered. In the month of January, 1930, the defendant was tried, but the jury were unable to agree. Shortly thereafter, on, to wit, the 15th of February, 1930, he was again placed on trial. At the time the trial Court was conducting an examination of the jury upon its *voir dire*, counsel for petitioner proposed and requested that the trial judge question prospective jurors relative to racial prejudice (R. 10). The Court was informed that subsequent to the first trial and prior to the second trial counsel

was advised that one of the members constituting the previous jury entertained racial prejudice, which fact may have influenced the juror's deliberations. The request was denied, the Court observing (R. 10):

> "I do not think that would be a proper question, any more than to ask whether they like an Irishman or a Scotchman."

Counsel noted an exception (R. 11) and the trial proceeded. The Government exercised four peremptory challenges and the defense five.

The defendant was subsequently convicted of murder in the first degree and sentenced to death (R. 6).

ARGUMENT.

The only question herein involved is the right of a defendant in a criminal prosecution to inquire of prospective jurors whether they entertain racial prejudice. It is respectfully submitted that this question is a proper and pertinent one. The Constitution of the United States (Amendment VI) specifically provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an *impartial* jury.

Petitioner was charged with the most serious offense in the calendar of crimes. At his first trial, the jury disagreed. Counsel having been informed that racial prejudice may have somewhat influenced the deliberations of the first jury, had a right, indeed was in duty bound, to propound to prospective jurors the pertinent question. The trial Court was informed of the reason

therefor. Notwithstanding this foundation, together with the plain mandate of the Constitution of the United States, petitioner was denied the right to determine whether the jury which was to pass upon his guilt or innocence was in fact impartial.

It is the birthright of every American citizen when charged with crime to be tried and punished according to law. The organic law as embodied in the Constitution provides for trial by an *impartial* jury (Amendment VI, Constitution of the United States). A suitable and pertinent *voir dire* inquiry is indispensable to determine whether prospective jurors are impartial. If this inquiry is denied, obviously the defendant is unable to determine the impartiality of the jury weighing in its very hands his right to live. The principle of this contention has frequently been announced by this Court.

In the case of *Queen v. Hepburn*, 7 Cranch 297, a slave sought his freedom. A prospective juror announced that he detested slavery. He was excused for cause, to which an exception was noted. Chief Justice Marshall in announcing the decision of this Court upon that particular point, said:

> "It is certainly much to be desired that jurors should enter upon their duties with minds entirely free from every prejudice. Perhaps on general and public questions it is scarcely possible to avoid receiving some prepossessions, and where a private right depends on such a question the difficulty of obtaining jurors whose minds are entirely uninfluenced by opinions previously formed is undoubtedly considerable.

> Yet they ought to be superior to every exception; they ought to stand perfectly indifferent between the parties, and although the bias which was acknowledged in this case might not perhaps have been so strong as to render it positively improper to allow the juror to be sworn on the jury, yet it was desirable to submit the case to those who felt no bias either way."

In the instant case life and death were at stake. Information tended to establish and the trial Court was advised that at the first trial prejudice did exist (R. 10), yet the trial Court denied to the defendant the right to inquire as to its existence. The language of this Court rendered in *Queen v. Hepburn, supra,* "Jurors ought to stand perfectly indifferent between the parties", is plain. The expression "It was desirable to submit the case to those who felt no bias either way" is distinct. Both were announced by this Court in *Queen v. Hepburn, supra,* and both were ignored herein.

Again, in the case of *Connors v. United States,* 158 U. S. 408, 413, the defendant was indicted for election frauds. Upon the trial thereof his counsel sought to ascertain from prospective jurors their political affiliations. The trial Court refused to allow defendant so to do. The question was presented to the Supreme Court of the United States. This Court, speaking through Mr. Justice Harlan, reviewed *Queen v. Hepburn, supra,* and announced that:

> "It is quite true, as suggested by the accused, that he was entitled to be tried by an impartial jury, that is by jurors who had no bias or preju-

> dice, that would prevent them from returning a verdict according to law and the evidence. It is equally true that a suitable inquiry is permissible in order to ascertain whether the juror has any bias, opinion, or prejudice that would affect or control the fair determination by him of the issues to be tried."

It is respectfully submitted that one of the simplest and plainest constitutional provisions was infringed when the trial Court refused to inquire as to racial prejudice.

The Court of Appeals in its opinion in the instant case said (R. 46-47):

> "In a jurisdiction like the District of Columbia, where the colored race is accorded all the privileges and rights under the law that are afforded the white race, and especially the right to practice in the courts, serve on the jury, etc., we are of the opinion that there was no abuse of discretion on the part of the trial court in refusing to permit the question to be answered by the jurors."

It is submitted that the Court of Appeals erred in applying such a test. This Court should take judicial notice that racial prejudice may exist. The unfortunate race riots in the District of Columbia about 1920 are well within the memory of all. In this case the Court of Appeals of the District of Columbia broadened its decision rendered in the case of *Crawford v. United States*, 41 F. (2d) 979, wherein it held the question unnecessary for the reason that a general question was put to the jurors by the trial Court which was

sufficiently broad and comprehensive to embrace any question of prejudice that might be raised from the fact that the defendant belonged to the colored race and the deceased to the white race.

The general question deemed sufficient by the Court inquired as to the ability of prospective jurors under all circumstances to give the defendant a fair and impartial trial, in accordance with the evidence.

The record will be searched in vain in the instant case for any such comprehensive question. The record, however, does disclose (R. 10) that the Court inquired as to prejudice against circumstantial evidence, and likewise as to the existence of conscientious scruples against the death penalty.

It is difficult to reconcile the reasoning of the trial Court herein. If a prospective juror had answered the pertinent question relative to racial prejudice in the affirmative, then undoubtedly he would have been wholly unfit and incompetent to serve as a juror.

Mr. Chief Justice Waite, in *Reynolds v. United States*, 98 U. S. 146-155, speaking of the determination by the trial Court of a formed opinion by a prospective juror, so as to render him competent or incompetent, said:

> "To make out the existence of the fact the juror who is challened may be examined on his *voir dire* and asked any questions that do not tend to his infamy or disgrace."

Prejudice against a negro charged with having killed a white man is equally as devastating to the impartiality of a juror as a formed opinion.

In *People v. Reyes et al.*, 5 Cal. 347, 349, decided by the Supreme Court of California in 1855, the defendants, who were Mexican citizens, were indicted for assult with intent to murder. At that time the infamous Know Nothing Society existed. The doctrine of the society embraced, among other things, a prejudice against Catholic foreigners. Various questions were propounded to prospective jurors seeking to ascertain whether any of them entertained prejudice against foreigners or whether they would extend to the defendants the same rights, privileges and protection that they would to men of local birth. The trial Court refused the question. The Supreme Court of California in passing thereon said:

> "Wherever the right of trial by jury exists, the law in all cases contemplates that each and every juror who sits in a cause should have a mind entirely free from all bias or prejudice of any kind whatsoever. In order to arrive at the condition of the person's mind who is offered as a juror a party is permitted to ask of the juror himself questions, the answers to which may tend to show whether he is prejudiced in the cause which he is about to undertake to decide."

The Court further said (page 350):

> "If the person called had not taken an obligation which would prejudice him against foreigners in such a manner as to imperil their rights in a court of law, he could say so and the answer would be harmless. If, upon the other hand, he had taken oaths and was under obligation which

> influenced his mind and feelings in such a manner as to deny to a foreigner an impartial trial, he is grossly unfit to sit as a juror and such facts should be known."

In the case of *People v. Car Soy*, 57 Cal. 102-103 (Supreme Court Calif., 1880), the defendant, a Chinaman, was prosecuted for robbery. His counsel proposed to ascertain if prospective jurors would give the same credence to the statements of a Chinaman as they would to a white man. The question was denied by the trial Court. Upon appeal, however, the Supreme Court of California said:

> "Each party has a right to put questions to a juror to show not only that there exists proper grounds for a challenge for cause but to elicit facts to enable the party to decide whether he will make a peremptory challenge. The defendant had a right to put these questions as they were pertinent for either purpose."

In the Circuit Court of Appeals of the Sixth Circuit, in the recent case of *Beatty v. United States*, 27 F. (2d) 323-324, the examination of the jury by the judge disclosed that the defendant's counsel proposed six questions which he wished to have put to the jury. The request was declined and the judge asked questions which he thought covered the ground of these requests so far as proper. Upon appeal the Circuit Court of Appeals said:

> "The matter was apparently regarded by counsel and perhaps by the trial judge, as if the criterion were whether the question sug-

gested, if answered in one way, would disclose grounds for challenge for cause, overlooking the right of defendant to get information aiding him to determine whether he wished to make a peremptory challenge. Obviously, the request for this information is subject to the reasonable discretion of the trial judge and cannot be carried too far without minimizing the good effect of examination by the judge instead of by counsel; but a reasonable amount of such inquiry in aid of the right of peremptory challenge should be permitted and we think one of these questions was of that permissible character. It inquired whether any member of the jury was a member of or contributed to any organization for the purpose of enforcing the prohibition law."

The Court then proceeded to announce the law, that upon the trial in a prohibition case an affirmative answer to this question would not disclose legal basis for challenge for cause, but quite plainly it would be a natural inducement as to the exercise of the peremptory challenge.

In the case of *Pinder v. State*, 27 Fla. 370, 374, 8 So. 837, the Supreme Court of Florida passed upon a case where the defendant, a negro, was convicted of murder and sentenced to death. The deceased was a white man. His counsel, when examining the jury on the *voir dire*, propounded a question relative to racial prejudice. The lower Court refused to allow the question and, upon appeal, the Supreme Court of Florida said:

"We think the court erred in refusing to permit this question to be propounded to the

jurors * * *. It was a pertinent and, as we think, a proper question to test fully the existence of bias or prejudice in the minds of jurors. It sought to elicit a fact that was of the most vital importance to the defendant, and a fact, if existent, was locked up entirely in the breasts of the jurors to whom the question was propounded, a knowledge of the existence of which could only be acquired by interrogating the juror himself. The answer to it, if in the affirmative, could have worked no harm to the juror or to anyone else, but would have done credit to the humanity and intelligence of the juror and would have satisfactorily exhibited to the court and to the defendant his entire competency so far as the element of bias or prejudice was involved. But if the answer to it had been in the negative, then we have no hesitancy in saying that it would have shown them to have been wholly unfit and incompetent to sit upon the trial of a man of the negro race, whose right to a fair and impartial jury is as fully guaranteed to him under our Constitution and laws as to the whitest man in Christendom; and such incompetency asserts itself with super-added force in such a case as this, where life or death of the defendant was the issue, to tip the scale in the jury's hands for adjustment."

This case cited in support thereof the following cases:

State v. Madrid, 12 Fla. 151;
Pierce v. State, 13 N. H. 536;
People v. Reyes, 5 Cal. 347;
People v. Car Soy, 57 Cal. 102;

People v. Christie, 2 Park. Crim. R. (New York) 579;
Jones v. State, 2 Blackf. 475 (Indiana);
Lester v. State, 2 Texas App. 432.

Again, in the case of *State v. McAfee*, 64 N. C. 339-340 (1870), counsel for the defendant proposed to ask the jurors "If he could, as a juror, do equal and impartial justice between the State and a colored man, the prisoner being colored." The trial Court refused to allow the question and, upon appeal, the Supreme Court of North Carolina said:

> "The causes of challenge to the favor are so numerous as to be described by Lord Coke as 'Infinite'. Any fact or circumstance may be given in evidence tending to suggest bias, partiality or prejudice on either side. Not only may his declarations to others be shown but a juror is bound to answer on oath any question touching his competency unless it tend to degrade or render him infamous. It is essential to the purity of trial by jury that every juror shall be free from bias. If his mind had been poisoned by prejudice of any kind, whether resulting from reason or passion, he is unfit to sit on a jury. Here the court refused to allow a proper question to be put to the juror in order to test his qualifications. Suppose the question had been allowed and the juror had answered that the state of his feelings toward the colored race was such that he could not show equal and impartial justice between the state and the prisoner, especially in charges of this character, it is at once to be seen that he would have been grossly unfit to sit in the jury box."

Citing *People v. Reyes*, 5 Cal. 347; *State v. Benton*, 2 D. & B. 196.

Again, in *Hill v. State*, 72 So., page 1003, decided by the Supreme Court of Mississippi in the year 1916, the appellant was convicted of murder in the first degree and sentenced to death. His counsel at the trial proposed to ask if any of the prospective jurors had any prejudice against the negro that would induce them to return a verdict on less or slighter evidence than they would return a verdict of guilty against a white man under the same circumstances. The trial Court refused to allow the question, and upon appeal the Supreme Court of Mississippi held:

> "We think the trial judge erred in refusing to allow the jury to be examined with reference to race prejudice. The defendant was a negro and was being tried by white men. *If for no other purpose than to exercise intelligently his right to peremptorily challenge jurors, the defendant had a right to inquire with reference to any bias or prejudice, on account of race, that might exist in the minds of any juror tendered to him.*"

In the case of *People v. Christie*, 2 Parker's Criminal Reports (New York) 579, the defendant was indicted for riot. The facts established that on July 4, 1853, the Ancient Order of Hibernians, a Catholic Irish organization, was having a parade in New York City. It resulted in a riot. Upon the trial of the defendant, it developed that ill feeling existed between the Ancient Order of Hibernians and the United Americans, a rival organization. Counsel proposed to question

prospective jurors relative to religious prejudice. Upon appeal the Court ruled that the question should have been permitted.

In the ancient case of Peter Cook, reported in 13 State Trials 334, decided in 1696 (Old Bailey), Chief Justice Tribby was presiding and the defendant, Cook, was on trial for treason. The Court in examining the jury said:

> "If any man in this panel have any particular displeasure to the prisoner, or be unindifferent, or have declared himself so, I do admonish and desire him to discover so much in general for it is not fit, nor for the honor of the King's justice, that such a man should serve on the jury."

In *People v. Vermilyea*, 7 Cowen 121 (Supreme Court New York, 1827), the Court, in speaking of the qualifications of a juror, said:

> "It is admitted that every citizen, whether arraigned for crime or impleaded in a civil action, is entitled to a trial by a fair and impartial jury. The trial by jury is justly considered an invaluable privilege, but it would become a mockery if persons who had prejudged the case were admitted as impartial triors. Lord Coke (1 Coke *v.* Littleton, 155, 156) says 'he ought to be least suspicious, that is, to be indifferent, as he stands unsworn, and then he is accounted in law, liber et legatis homo; otherwise he may be challenged, and not suffered to be sworn.
>
> "What is meant by a person standing indifferent? Manifestly, that the mind is in a state of neutrality, as respects the person and the matter to be tried; that there exists no bias, for

> or against either party, in the mind of the juror, calculated to operate upon him; that he comes to trial with a mind uncommitted and prepared to weigh the evidence in impartial scales."

In the trial of Aaron Burr for treason, Vol. 1, Burr Trials, pages 369 and 379, Chief Justice Marshall gives a most interesting dissertation upon the importance of an impartial jury. The Court said:

> "It was certainly one of the clearest principles of natural justice that a juryman should come to a trial of a man for life with a perfect freedom from previous impressions; that it was clearly the duty of the Court to obtain, if possible, men free from such bias. * * * This was not more a principle of natural justice than a maxim of the common law, which we have inherited from our forefathers. The same right was secured by the Constitution of the United States which entitles every man under a criminal prosecution to a fair trial by an impartial jury."

The petitioner herein was tried under circumstances calling for the strictest indifference on the part of the jury. It required patience, reason, and common sense. Passion, prejudice, or sympathy would be devastating to a fair and impartial trial. A reading of the record will disclose that the widow of the decedent was a pitiful figure in the court-room (R. 23, 24, 25). Her conduct necessarily engendered antipathy towards accused. Counsel for the defendant refrained from cross-examining the witness purely out of consideration for her (R. 24). It is impossible to present to this

Court the feeling, the prejudice, and the passion that existed herein.

It is respectfully submitted that those against whom prejudice is directed should be permitted a suitable inquiry, in order to determine its existence. No one can gainsay that prejudice exists in the District of Columbia. No one can deny that religious and racial prejudice exist throughout the length and breadth of the land. Cases have been cited to this Court from every geographical section of the country showing that prejudice in one form or another exists almost everywhere. It was error for the Court of Appeals of the District of Columbia to have ruled that defendant could not inquire as a matter of right whether such prejudice existed. The right to practice in courts is not decisive of its existence nor does it obliterate it. The right to sit upon a jury is equally indecisive and unobliterative. To practice as counsellors in the courts, to serve on the jury, are privileges long ago granted to members of every race and creed. When exercising their respective functions those who practice law and those who serve on juries are themselves frequently the victims of race prejudice.

The decisions of this Court are harmonious with the plain and unequivocal language of the Constitution. Trial by an impartial jury means exactly what it states. To deny to petitioner the right to inquire whether a jury is impartial violates the very fundamental right of trial by jury and deprives him of that right so sacredly given to him in the Constitution itself.

Congress has enacted Section 918 of the District of Columbia Code, which permits in capital cases twenty peremptory challenges to the prosecution and to the defense. Neither rhyme nor reason have to be cited as cause to exercise such a challenge, but, in order to intelligently exercise it, a suitable and a rightful *voir dire* inquiry must be permitted. The refusal of the trial Court to permit the pertinent questions abridges the benefits intended to be given by the Code.

Conclusion.

The right to trial by an impartial jury has been thoroughly embedded in our institutions as free men. The common law provided therefor; the Constitution of the United States reiterated this common-law doctrine. It is based upon reason, law, and common sense. Petitioner had a right to ascertain whether the jury which was to pass upon his guilt or innocence was impartial. This doctrine imposes itself with superadded force when life and death are at stake. The refusal of the trial Court to inquire relative to racial prejudice was erroneous. The Court of Appeals committed error in sustaining the trial Court.

It is respectfully submitted the cause should be reversed.

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